

FILED

APR 23 2015

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

BENJAMIN KARL SMITH,

Plaintiff,

vs.

STATE OF MONTANA, MONTANA
STATE PRISON, MONTANA
DEPARTMENT OF CORRECTIONS,
WARDEN KIRKEGARD, SGT.
POSTMA, and OFFICER DAVID
AUGUST (BOGUT),

Defendants.

CV 14-62-H-DLC-JTJ

ORDER

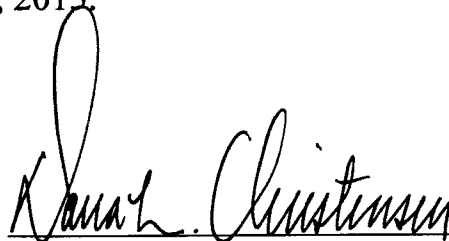
United States Magistrate Judge John T. Johnston entered his order, findings, and recommendations in this case on March 2, 2015, recommending *inter alia* that Plaintiff Smith's Complaint be dismissed as to Defendants State of Montana, Montana State Prison, and Montana Department of Corrections. Smith failed to timely object to the findings and recommendations, and so waived the right to *de novo* review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court adopts Judge

Johnston's findings and recommendations in full.

Judge Johnston found, and this Court agrees, that the State of Montana, Montana State Prison, and Montana Department of Corrections are immune from suit pursuant to the Eleventh Amendment.

Accordingly, IT IS ORDERED that Judge Johnston's findings and recommendations (Doc. 8) are ADOPTED IN FULL. Defendants State of Montana, Montana State Prison, and Montana Department of Corrections are DISMISSED from this action.

DATED this 23rd day of April, 2015.

A handwritten signature in black ink, reading "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, Chief Judge
United States District Court